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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1329

EDWARD H. HYNES, *et al.*,

Appellants,

—v.—

THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

BRIEF FOR THE APPELLANTS

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Appellants,

—v.—

THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

BRIEF FOR THE APPELLANTS

Opinions Below

The opinion of the Supreme Court of New Jersey (App. A1-A18) is reported at 66 N.J. 376, 331 A.2d 277 (1975). The opinions of the Appellate Division of the Superior Court of New Jersey (App. B1-B3) and the Chancery Division of the Superior Court, Bergen County (App. C1-C3), are not reported.

Jurisdiction

This action was commenced in the Superior Court of the State of New Jersey, Bergen County, against the Borough of Oradell, New Jersey, for a judgment declaring uncon-

stitutional under the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States, an ordinance enacted by the Borough, and enjoining enforcement of that ordinance. Upon motion for a preliminary injunction, a hearing was held and the Superior Court (trial court) ruled that the ordinance was void because violative of the First Amendment, as well as because it was incomplete under requirements of New Jersey law, and entered judgment in favor of the plaintiffs (App. C4). The Appellate Division of the Superior Court affirmed the judgment of the trial court. On appeal to the Supreme Court of New Jersey, the ordinance was held valid under the First Amendment and all other provisions of the United States Constitution. The judgments below were reversed, with the instruction that judgment for the defendants be entered. Two members of the Court dissented.

The judgment of the Supreme Court of New Jersey was entered on January 24, 1975, and Notice of Appeal was filed in that Court on April 16, 1975 (App. D1). The jurisdiction of the United States Supreme Court to review this decision on appeal is conferred by Title 28 United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *King Mfg. Co.* v. *Augusta,* 277 U.S. 100; *Jamison* v. *Texas,* 318 U.S. 413; *Independent Warehouses, Inc.* v. *Scheele,* 331 U.S. 70; *Poulos* v. *New Hampshire,* 345 U.S. 395; *Coates* v. *Cincinnati,* 402 U.S. 611.

On June 9, 1975 this Court noted probable jurisdiction.

Statute Involved

The basic statute involved is Oradell Ordinance No. 573 (App. E1-E4) as amended on April 3, 1973 by Ordinance No. 598 (App. E-5). The subsequent amendment on which the decision of the Supreme Court of New Jersey is based is Oradell Ordinance No. 598-A, which provides as follows:

> An Ordinance to Amend and Supplement an Ordinance Entitled "An Ordinance to Regulate and Prohibit Canvassing and Soliciting in the Borough of Oradell and Establish Fees and Provide Penalties for the Violation Thereof."
>
> WHEREAS, The Borough of Oradell is primarily a one family residential town whose citizens are employed elsewhere, resulting in the wives of the wage earner being left alone during the day; and
>
> WHEREAS, because of the geographical location of most of the homes it is impossible to police all areas at the same time, resulting in a number of break and entries and larceny in the home; and
>
> WHEREAS, it is in the public interest and the public safety that persons not be permitted to call from house to house on the pretext of soliciting votes for a designated candidate or signatures for a nominating petition, or to solicit for a recognized charitable cause or borough activity, without such persons being first identified by the Police Department; and
>
> WHEREAS, the Mayor and Borough Council of The Borough of Oradell feel that it is in the public interest and for the protection of The Borough of Oradell that such persons be required to notify the Police Department for the purpose of identification.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of The Borough of Oradell, in the County of Bergen and State of New Jersey, that an ordinance entitled "An ordinance to regulate and prohibit canvassing and soliciting in The Borough of Oradell and establish fees and provide penalties for the violation thereof" be amended and supplemented as follows:

(1) That Section 1 be amended and supplemented by the addition of Section 1 (a) to be entitled "Exceptions to Permit" as hereinafter set forth:

Section 1 (a): Exceptions to Permit

Any person desiring to canvass, solicit or call from house to house in the Borough for a recognized charitable cause, or any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only. Said notification shall be good for the duration of the campaign or cause. The provisions of this section shall also apply to representatives of Borough Civic Groups and Organizations and any veterans honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States. All other Sections of Ordinance No. 573, with the exception of the penalty clause designated as Section 7, shall not be applicable to such persons or groups as designated herein.

(2) All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

(3) This ordinance shall take effect after final passage and publication as required by law.

This is to Certify that the foregoing ordinance was finally passed and adopted at the regular meeting of the Council of The Borough of Oradell, N.J. on July 16, 1974, and that the same was approved by the Mayor on July 16th, 1974.

STANLEY J. KUFEL
Borough Clerk

The Sunday Post (R-5028)
Fee: $30.00
July 21, 1974

Questions Presented

Ordinance No. 598-A of The Borough of Oradell set forth above, requires that "any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only." Criminal penalties are provided for violation of this ordinance. The Supreme Court of New Jersey has sustained the validity of the ordinance (App. A7) under the First Amendment and as against "any of the other rights of plaintiffs herein." The plaintiffs include a member of The General Assembly of the State of New Jersey representing the Borough of Oradell, and four registered voters in and residents of Oradell.[1]

---

[1] Plaintiff Suzan DePrima no longer resides, nor is eligible to vote, in Oradell, New Jersey.

The questions presented are:

(1) Whether the Ordinance, on its face or as applied to the plaintiffs herein, is invalid under the First Amendment to the Constitution as made applicable to the States by the Fourteenth Amendment.

(2) Whether the Ordinance, on its face or as applied to the plaintiffs herein, is invalid under the due process or privileges and immunities clauses of the Fourteenth Amendment.

Statement of the Case

Appellant Edward H. Hynes was first elected to the General Assembly of New Jersey in November 1971 as the representative of Assembly District 13-E. Due to reapportionment, the lines of Assemblyman Hynes' district were redrawn in 1973 to include the Borough of Oradell, and the district was renumbered 38.

In March of 1973 Assemblyman Hynes, running for the Democratic nomination and working with limited financial resources (App. F2), went to the Borough of Oradell to campaign house-to-house for re-election. On that occasion, he was stopped by a member of the Oradell police force and ordered to leave the Borough. On April 3, 1973, the Borough of Oradell adopted Ordinance No. 598 (App. E5) as an amendment to its Canvassing and Soliciting Ordinance No. 573 (App. E4), adopted May 3, 1971. By the terms of the amended ordinance, candidates for public office and participants in political and other causes were required to register with the Oradell Police Department before they could conduct house-to-house canvassing, soliciting or calling.

Appellants commenced this action in the Superior Court of Bergen County on October 15, 1973, to have Ordinance No. 598 declared unconstitutional because violative of rights guaranteed to them by the First, Fourteenth and Fifteenth Amendments to the Constitution, and for permanent injunctive relief from enforcement of the Ordinance (Verified Complaint, App. F). Appellant Hynes alleged that the purpose of his house-to-house canvassing was to inform Oradell voters of his candidacy and other issues of public importance, and that the Ordinance abridged his First Amendment right freely to communicate this information (App. F1-4). Appellants Stier, Barone, Kougasian and DePrima alleged that their First Amendment rights to receive such communications from candidates for political office, and to exchange views with such candidates and other residents of the Borough regarding matters of public importance, were unconstitutionally abridged by the Ordinance (App. F4-9). In their Answer, the defendants denied that the Ordinance was unconstitutional and in an affidavit filed October 25, 1973, George Brugnoli, Chief of Police of the Borough of Oradell contended (App. G4-5) that the Ordinance was necessary to prevent crime, and that: " . . . knowing who is in the municipality and for what purpose is an important part of law enforcement."

Following a hearing on the motion for a preliminary injunction, the Superior Court on October 18, 1974, held *inter alia* that the Ordinance was invalid for lack of a penalty clause, unconstitutionally vague and overbroad, and violative of the First Amendment (App. C).[2] Its judgment was affirmed by the Superior Court, Appellate Division on April

[2] The transcript of the trial judge's oral decision appears to be technically flawed.

15, 1973, on the ground that Ordinance No. 598 was invalid for lack of a penalty provision. The Appellate Division found it unnecessary to pass on "the important issues" of constitutionality.

The Borough of Oradell appealed to the Supreme Court of New Jersey and, while this appeal was pending, the Borough on July 16, 1974 again amended Ordinance No. 573 by enacting Ordinance No. 598-A to replace No. 598.[3]

The New Jersey Supreme Court held that Ordinance No. 598-A, as the version of the ordinance in question extant at the time of appellate review, was the version of the ordinance before it for purposes of determining the case (App. A-4). Thus reaching the federal constitutional questions, the Court, with two dissents, reversed the decision below and held that Ordinance No. 598-A "was not a constitutionally cognizable interference with a First Amendment right nor with any of the other rights of plaintiffs herein." Such governmental impingements upon speech and assembly as were effected by the ordinance were "reasonable," and the Court viewed reasonableness as the proper test of the Ordinance's constitutionality because the appellants sought to exercise their First Amendment rights "house-to-house" rather than "in public areas" (App. A5).

In the opinion, the New Jersey court relied in part (App. A4) on its opinion in a related case decided the same day, *Borough of Collingswood* v. *Donald Ringgold,* set forth in

[3] Ordinance No. 598-A provides a penalty for its violation. The reference in Ordinance No. 598-A to "the penalty clause designated as Section 7" is in error, as the penalty clause of Ordinance No. 573 is in fact Section 6 (App. E-4). However, the Supreme Court of New Jersey ruled that the defect in Ordinance No. 598 "was remedied by the adoption of another amendatory ordinance, 598-A, providing for a penalty on violation. . . ." (App. A-4).

the Appendix (A19-A45) and reported at 66 N.J. 350, 331 A.2d 262 (1975), now pending in this Court (October Term, No. 74-1335) on the jurisdictional statement.

Summary of Argument

The declared purpose of Oradell Ordinance No. 598-A is public safety, as putatively threatened by persons posing as candidates, or political or charitable canvassers. Its constitutionality must be determined in the context of that purpose.

I.

As applied to the appellants, the ordinance is invalid under the First Amendment guarantees embodied in the Fourteenth Amendment. The constitutional rights of appellant Hynes and the other appellants are in part overlapping and in part distinct.

A. Hynes' rights as a holder of and campaigner for State office representing Oradell, to communicate and associate with the residents, are protected by the First Amendment. These rights embrace the right to canvass from door-to-door, and extend to Hynes' political supporters. The political importance of door to door campaigning, and its high degree of First Amendment protection, have repeatedly been articulated by this Court. *American Party of Texas* v. *White,* 415 U.S. 767, 787; *Martin* v. *Struthers,* 319 U.S. 141, 145-46.

B. The appellants who are residents of Oradell have the right under the First Amendment to receive informa-

tion and ideas from Hynes and other political candidates campaigning in Oradell. *Procunier* v. *Martinez,* 416 U.S. 396, 408-09. This includes the right to discussion at the residential door. The Oradell residents also have the right, independent of their status as constituents, to impart ideas and information by calling from house to house among themselves. The ordinance would subject all these rights to the precondition of police registration.

C. (1) The ordinance infringes the above rights by subjecting their exercise to the inconvenience and expense of the registration requirement. Furthermore, many persons are reluctant to involve themselves with officialdom, and the requirement will chill the willingness and diminish the availability of "dedicated volunteers." (2) The ordinance's identification requirement will remove the shield of anonymity from canvassers for political campaigns and causes, and chill such activities by exponents of unpopular views. *Talley* v. *California,* 362 U.S. 60.

D. The asserted State interest is insufficient to justify the infringement of First Amendment rights which the ordinance will cause. (1) There is nothing in the record to show either a general municipal need for such restrictions on canvassing, or justifying circumstances peculiar to Oradell. There appear to be few if any comparable ordinances elsewhere. The annual rate of breaking and entering crimes in Oradell is not significantly different from that of other suburban communities of like population. Nor is there any showing that a single one of these crimes in Oradell has had anything to do with calling from house to house. (2) The standard to be applied in

assessing the validity of the ordinance is whether there is a "compelling state interest" necessitating its infringement of First Amendment rights. *Williams* v. *Rhodes,* 393 U.S. 23, 31, 42. The New Jersey court erred in applying a less rigorous test. (3) There is no reasonable relation between the requirements of the ordinance and prevention of breaking and entering. No rational basis has been shown for singling out political canvassing as a source of these crimes. Nor does the identification requirement appear to serve any useful purpose in this connection. (4) For all the foregoing reasons, the registrational requirement is invalid under the First Amendment. Previous registration cannot be made a precondition to exercising the right of free speech. *Thomas* v. *Collins,* 323 U.S. 516, 540. Nor is there sufficient State interest to warrant the requirement of making a police record of all proposed canvassing, identifying the canvassers. *Talley* v. *California,* 362 U.S. 60, 66-67.

II.

The ordinance is invalid on its face for overbreadth, under the First Amendment guarantees. The Oradell ordinance is not limited to candidates for office, nor to strangers to the community. It applies to residents of Oradell as well as non-residents, and to canvassers as well as candidates. Thus it infringes the First Amendment rights of all residents of Oradell, and all persons associated with political campaigns or causes who might have occasion to canvass in Oradell. Appellants have "standing to raise an overbreadth challenge" based on the ordinance's infringement of the rights of these many other persons. *Grayned* v. *City of Rockford,* 408 U.S. 104, 114-15. The

limitations on the "overbreadth doctrine" indicated in *Broadrick* v. *Oklahoma*, 413 U.S. 601, 613-16 are inapplicable here, since the invalid sweep of the ordinance is substantial, and affects a wide range of "expressive or communicative conduct." Whatever lesser restrictions on door-to-door canvassing might be sustained, the sweep of the registrational requirement results in a pervasive infringement of political and community First Amendment values, and the ordinance must be held invalid on its face.

III.

The ordinance is invalid on its face for vagueness, under the First Amendment guarantees and the due process clause. There is nothing in the language of the ordinance specifying the requisites of "identification." This failure leaves to the police an impermissible range of discretion to determine what constitutes a sufficient "notification" within the meaning of the ordinance. The New Jersey court has put no limiting construction on the ordinance, and so far as the record shows, no regulations or forms have been issued by the Oradell police. The ordinance does not state whether or not the registrant must disclose the campaign or cause with which he is affiliated, or the time and place of the canvassing which he proposes to do, and there are other important areas of uncertainty. Such a degree of imprecision is fatal to the ordinance both under the First Amendment, *Grayned* v. *City of Rockford, supra* at 109, and the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U.S. 451.

IV.

The ordinance is invalid under the privileges and immunities clause of the Fourteenth Amendment. That clause protects "interests, growing out of the relation between the citizen and the national government, created by the Constitution and federal laws." *Madden* v. *Kentucky*, 309 U.S. 83. The right to meet and discuss candidates and political issues is of that description. See *Slaughter-House Cases*, 16 Wall. 36, 79; *Crandall* v. *Nevada*, 6 Wall. 35, 45; *Hague* v. *C.I.O.*, 307 U.S. 496, 512, 532. For the reasons given heretofore Ordinance No. 598-A infringes those privileges and immunities and is invalid under that clause.

Argument

The ordinance challenged in this case is significantly different, in language and purpose, from most of the legislation restricting house-to-house calling[4] which has come before the courts for constitutional review. By far the most common are the so-called "Green River" ordinances, which forbid house-to-house sales of merchandise, and are generally regarded by the courts as intended to protect householders from unwelcome intrusion into the privacy of their homes. Such an ordinance, as applied to a solicitor of subscriptions to national magazines, was upheld by this Court against challenge under the First Amendment. *Breard* v. *Alexandria*, 341 U.S. 622. All members of the Court who reached the First Amendment point[5] agreed that the free speech contention was unavailable to "merchants . . . selling pots" or "solicitors for gadgets or brushes," and their disagreement turned chiefly on the issue of whether or not solicitors of magazine subscriptions should be regarded as commercial vendors or "agents of the press." 341 U.S. at 641-42 and 649-50.

[4] On its face, the Oradell ordinance is susceptible to the interpretation that the words "from house to house" qualify only the verb "call," so that the preceding verbs "canvass, solicit" would cover activities in the streets and other public places. The New Jersey court did not note this question, but its opinion explicitly construes the ordinance (App. A3-A5) as limited to house-to-house activities or, as the court put it (App. A5) "door-to-door ventures of charitable solicitors, political campaigners, and advocates in behalf of political causes."

[5] The Alexandria ordinance was also attacked under the due process and commerce clauses. Chief Justice Vinson and Justice Douglas thought it invalid as a burden on interstate commerce, and Justices Black and Douglas thought it invalid, as applied to the defendant, under the First Amendment.

The only other purely door-to-door legislation to reach this Court was a municipal ordinance forbidding "any person distributing handbills, circulars or other advertisements to ring the doorbell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door" to receive the advertisement. This was held invalid under the First Amendment. *Martin* v. *Struthers*, 319 U.S. 141.[6] The ordinance was intended both to protect the repose of night-shift workers, and to guard against burglars posing as canvassers (319 U.S. at 144); this second purpose is closely akin to the object of the Oradell ordinance as described in the preambular clauses.

The Alexandria and Struthers ordinances are prohibitory. Less pervasive than the "Green River" prohibitory type, but not uncommon, are others which are regulatory, and condition canvassing or distributing activities on the issuance of a permit by municipal authorities. E.g. *Lovell* v. *City of Griffin*, 303 U.S. 444; *Schneider* v. *Irvington*, 308 U.S. 147; *Cantwell* v. *Connecticut*, 310 U.S. 296. Where commercial or charitable solicitation is involved, the usually stated object of such legislation is the prevention of fraud; public safety may also be invoked as justification. Oradell Ordinance No. 573 and the ordinance involved in the coeval *Collingswood* case are both of this type.

In view of this multiplicity of techniques and purposes, there is obvious relevance in Lord Dunedin's remark (quoted by Justice Blackmun in *Lehman* v. *City of Shaker Heights*, 418 U.S. 298, 302) that ". . . before you could

[6] Justices Reed, Roberts, and Jackson dissented. Justice Frankfurter (319 U.S. at 152-54) appears to have concurred on the ground that the ordinance was "an invidious discrimination against distributors of what is politely called literature."

say whether a particular thing could be done in a certain place you would have to know the history of the particular place." *M'Ara* v. *Magistrates of Edinburgh,* [1913] Sess. Cas. 1059, 1073-74. The residential door has a considerable First Amendment "history," in the light of which Oradell Ordinance 598-A must be viewed. Its effect is to substitute *registration* for regulation in the categories—charitable and political canvassing—to which it applies.[7]

Since Ordinance No. 598-A offers no impediment to anyone ready and willing to comply with the police notification requirement, obviously its purpose is not to prevent intrusion upon privacy and repose, as was the objective in the *Breard* and *Martin* cases, *supra.* Nor does the requirement appear to be designed to prevent fraud, and no such purpose is apparent in any of the "Whereas" clauses.

Accordingly, the constitutional validity of Ordinance No. 598-A is to be determined in the context of the single purpose invoked in the preamble and the affidavit in support of the answer (App. G4-G5): to wit, public safety, as putatively threatened by persons posing as candidates, or political or charitable canvassers or solicitors.

It is our position that nothing in the record of this case justifies the infringement of federal constitutional rights which Ordinance No. 598-A entails, and that the Ordinance is invalid, both as applied to the appellants and on its face.

---

[7] Apparently it also excepts honorably separated veterans and "Borough Civic Groups and Organizations" from the requirements of Ordinance No. 573, so that they may engage in commercial solicitation upon compliance with the registration provisions of No. 598-A. [8]

I.

As Applied to the Appellants, the Ordinance Is Invalid Under the First Amendment Guarantees Embodied in the Fourteenth Amendment.

The appellants' federal constitutional rights all flow from the same sources, but take different forms and Ordinance No. 598-A infringes the several rights differently. Appellant Hynes is not a resident of Oradell, but the residents are his constituents, and the ordinance infringes both his rights of group association, and of communication with his constituents. The other appellants are residents of Oradell, and the ordinance infringes their rights of group association, and of communication both with candidates and canvassers, and with each other. We will deal separately with the rights of Hynes and the other appellants, and then discuss the sufficiency of the state interest invoked to justify the infringement.

A. The First Amendment Rights of Appellant Hynes

"Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes." *Mills* v. *Alabama,* 384 U.S. 214, 218-19. Recently, in *Kusper* v. *Pontikes,* 414 U.S. 51, the Court restated the key role which political association and discourse perform in the constitutional scheme (414 U.S. at 56-57):

> "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. . . ."

There can, accordingly, be no question that the First Amendment protects the right of Hynes, as a holder of and campaigner for State office as legislative representative of Oradell, to come into the Borough and communicate with his constituents and associate with those joining him in common political purpose.

As both a practical and a legal matter, that general right must embrace the particular right of Hynes *and his supporters* to canvass and solicit from door to door in the interest of their political campaigns or causes. The value of door-to-door distribution of literature as a means of communication[8] was forcefully expressed by this Court in *Schneider* v. *Irvington, supra* at 164, and *Martin* v. *Struthers, supra* at 145-46. In the latter case, the special importance of door-to-door political canvassing was thus remarked:

> "Of course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the

[8] Such activity does not constitute a trespass; " . . . the knocker on the front door is treated as an invitation or license to attempt an entry. . . . " *Breard* v. *Alexandria, supra* at 626.

> citizens in their homes. Door to door distribution of circulars is essential to the poorly financed causes of little people."

Last year this Court sustained, against challenge by minor political parties and independent candidates, Texas laws requiring them to file petitions supported by notarized signatures of qualified voters in order to obtain places on the ballot. *American Party of Texas* v. *White*, 415 U.S. 767. Such requirements are a standard feature of state election machinery,[9] but it is hard to see how they could be upheld as permissible burdens on rights secured by the First and Fourteenth Amendments if house-to-house solicitation were generally subject to restrictions such as Oradell seeks to impose.

It needs no further argument to establish that Hynes' rights as a candidate or office-holder must include the right to have his supporters canvass and solicit from door to door in his behalf. As Justice White, for the Court, wrote in the *American Party* case (415 U.S. at 787): "Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." Especially for the candidate for local office in a small district or community, and the minor party candidate, for whom access to broadcasting stations and daily newspapers is difficult if not impossible, the pursuit of support from door to door is the *sine qua non* of success.

[9] The election laws of New Jersey contain comparable requirements, which of course are effective in Oradell. N.J. Stats. Ann. Title 19:13-3 *et seq.*, 19:23-5 *et seq.*, and 19:25-3 *et seq.*

B. The First Amendment Rights of the Other Appellants

The process of communication requires listeners and readers as well as speakers and writers, and the rights of all these are protected by the First Amendment. Over the past twenty years this Court has repeatedly declared that the First Amendment embraces the right to receive information and ideas as well as the right of expression. *Procunier* v. *Martinez*, 416 U.S. 396, 408-09; *Kleindienst* v. *Mandel*, 408 U.S. 753, 762-63; *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390; *Stanley* v. *Georgia*, 394 U.S. 557, 564; *Lamont* v. *Postmaster General*, 381 U.S. 301; *Martin* v. *Struthers, supra* at 143.

Accordingly, the rights of the appellants who are residents of Oradell to hear what political candidates and their supporters have to say are constitutionally independent of the campaigners' rights. As Justice Powell put the matter in *Procunier* v. *Martinez, supra* at pp. 408-09: ". . . the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with . . . a particular means of communication in which the interests of both parties are inextricably meshed."

As to considerations of time and place, the rights of candidates and canvassers on the one hand and constituents on the other are similarly grounded. If door-to-door canvassing is essential to effective prosecution of the campaign or cause, the rights of the householder are infringed by unwarranted restrictions on the canvassing.

But the Oradell residents also have rights which are quite independent of their status as constituents of Hynes or any other candidates or office-holders. They may wish to impart as well as to receive information and ideas, and to call from

house to house among themselves. The Oradell ordinance applies equally to residents and non-residents, and its prohibitions apply not merely to candidates but to "any person." [10]

The rights of the Oradell residents are, if anything, even more fundamental than those of Hynes. Surely no part of the rights guaranteed by the First Amendment is deeper-seated than the right to communicate with one's neighbors and fellow-townsmen about national and local political questions. Under Ordinance No. 598-A, the appellant Oradell residents are forbidden to engage in this traditional and constitutionally protected activity on a door-to-door basis without complying with the police notification requirements.

C. Infringement of Appellants' First Amendment Rights

Oradell Ordinance No. 598-A neither prohibits door-to-door canvassing nor requires an authorizing permit or license, and the New Jersey court majority upheld it (App. A-7) on the basis that "no lesser form of intrusion on the right of free speech" was conceivable. We submit that this is a superficial and badly mistaken assessment of the effect of the ordinance.

The ordinance is far from precise, and in a later part of this brief we discuss its ambiguity in constitutional terms. For present purposes, we assume that the notification requirement may be satisfied by a writing, submitted to the police in person or by mail, giving the name and address of the would-be house-to-house caller.

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[10] Appellant Stier in his complaint (App. F5) alleges that Ordinance No. 58 prevents him "from communicating with other residents of the Borough and frustrates his efforts to convince these residents to support candidates of the Democratic Party."

In viewing the ordinance, the New Jersey court appears to have confused the (apparent) simplicity of the requirement with its effect. *If* it is lawful to require that every charitable or political door-to-door caller give the police an identifying notification in advance, perhaps Ordinance No. 598-A uses minimum means to that end. But the question is, of course, whether, on the record in this case, the consequences of the requirement are constitutionally justifiable. We submit that they are not, and that the ordinance, in at least two respects, deeply infringes upon and chills exercise of the appellants' constitutional rights as heretofore described.

1. *The burden of notification: inconvenience and reluctance.* Regardless of the specific content of the required notification, the process of giving it imposes a heavy burden of expense and inconvenience on the political canvasser. It must be remembered that most of them are unpaid volunteers, scrounging a few hours or even minutes from their working and family commitments. Their activities cannot be nicely scheduled as to time, place, or even identity. The baby has a bad cold and Mother Jane cannot canvass this afternoon; can Laura take her place? Perhaps, but only if she can cover a more conveniently located area. Under the most restricted reading of the ordinance, such shifts will require either a letter or, in case of a last-minute change, a visit to the police station to submit the written notification.

Especially in local elections, the candidate's own campaign trail takes unexpected twists and turns. Anyone of a hundred unexpected developments may dictate a change in his schedule and, if door-to-door canvassing is involved, a new notification to the police. With all respect to the New

Jersey court, the majority appears to have been blind to the vicissitudes and other painful realities of electioneering.

Apart from the inconvenience, it is common knowledge that many people are shy of officialdom in general, and the police in particular. It is hard enough at best to round up the "dedicated volunteers" of whom Justice White spoke in the *American Party* case. Needless to say, the task will be much harder under ordinances such as No. 598-A, especially if the volunteers are canvassing for a candidate known to favor the creation of a civilian review board for complaints against the police.

2. *Loss of anonymity.* Since the stated object of Ordinance No. 598-A is "identification," its necessary effect will be to make a police record of the identity of all charitable and political house-to-house callers in the Borough of Oradell. It is not the usual practice of political candidates to keep a low profile, and under most circumstances this aspect of the statute might not be burdensome to them. Here again, however, it is important to keep in mind that the ordinance is not for candidates only, and that even candidates might in some circumstances be wary of the consequences of police fore-knowledge of their appearance on the local scene.

In Oradell, as elsewhere, some candidates and causes are popular and others are not. This Court paid heed to the social values of anonymity in *Talley* v. *California,* 362 U.S. 60, pointing (362 U.S. at 65) to earlier cases in which public identification of "members of groups engaged in the dissemination of ideas" was also held violative of the First Amendment. *Bates* v. *Little Rock,* 361 U.S. 516; *National Assn. for Advancement of Colored People* v. *Alabama,* 357

U.S. 449; *cf. Lamont* v. *Postmaster General,* 381 U.S. 301, 307; see also *Strasser* v. *Doorley,* 432 F.2d 567, 569 (C.A. 1st 1970).

Anonymity, to be sure, is not an absolute right, and this Court has upheld disclosure requirements when it found a state interest sufficient to warrant them. *United States* v. *Harriss,* 347 U.S. 612. However, as Justice Pashman observed in his dissent (App. A13), the *Talley* case and other decisions of this Court have established that "the first amendment protects the right of individuals to engage in political activity without giving up the shield of relative anonymity."

The question, therefore, is the sufficiency of the State interest, as shown in the record, to justify the infringements on basic First Amendment values which are the consequence of Ordinance No. 598-A.

D. Insufficiency of the State Interest

As shown by the preambular clauses of Ordinance No. 598-A and the affidavit of Chief Brugnoli in support of the answer (App. G4-G5), the State interest invoked to justify the requirements of the ordinance is the safety of the residents of Oradell against local crime, especially "break and entries" committed or attempted by persons calling from house to house "on the pretext" of charitable or political canvassing.

There is no gainsaying the primal quality of protection of the householder against crime as a state interest. But it is not an interest peculiar to Oradell; it is pervasive, and the governmental measures reasonably necessary to promote public safety vary enormously according to time, place, and other circumstances.

1. *Insufficiency of the factual showing in the record.* In order to show a state interest supportive of the requirements in Ordinance No. 158-A, the appellees should be able to show that other municipalities, including some comparable in size and social composition to Oradell, have found that charitable or political door-to-door canvassing is a cause of crime and have sought to eliminate or mitigate it by comparable means. Failing such a showing, appellees should demonstrate that there are factors and circumstances peculiar to Oradell which justify the registration requirements. We submit that, on either basis, the record is barren of any facts or allegations that support the ordinance.

While there are several organizations and periodical publications concerned with municipal legislation,[11] appellants have not found any comprehensive survey which would establish the existence *vel non* of ordinances similar to the one here at issue. Review of these publications and inquiries to the organizations have not disclosed any such.[12] It is clear that ordinances prohibiting or regulating commercial canvassing are very widespread, and others covering the solicitation of religious or charitable contributions are not uncommon. No ordinances comparable to Oradell's have surfaced in the few state and lower court decisions since the *Breard* case.[13]

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[11] See *Martin* v. *Struthers,* 319 U.S. at 148, and the *Municipal Ordinance Review,* a monthly publication of the National Institute of Municipal Law Officers. Most states have "Municipal Leagues," and there is a National League of Cities and a National Municipal League.

[12] Appellants have not had time or resources to make a thorough survey, and do not represent to the Court that such ordinances do not exist.

[13] The Irvington, N. J. ordinance invalidated in the *Schneider* case covered *all* door-to-door canvassing and was prohibitory rather than, as here, registrational. As the Green River type of ordinance

If evidence of a general municipal need for legislation such as Ordinance No. 598-A is lacking, so is any showing of necessitous circumstances peculiar to Oradell. We are told in the first two "Whereas" clauses that Oradell is "primarily a one family residential town" of commuting husbands whose wives are "left alone during the day" and that because "it is impossible to police all areas at the same time" there have been "a number of break and entries and larceny in the home." Chief Brugnoli's affidavit (App. G4) gives the number of "breakings and enterings within the Borough" year by year from 1969 to May 1973, and (App. G5) the larcenies in 1972. The New Jersey court's opinion tells us (App. A6) that the population of Oradell was 8903 in 1970. On that basis it was held that the requirement of police registration for political canvassers was "reasonable."

With all respect to the New Jersey court, we submit that these facts are wholly inadequate to show any particular local situation, or any basis for the ordinance. There must be hundreds of comparable suburban residential communities in the United States,[14] and it is hard to conceive of a community where all areas can be policed at the same time.

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was upheld in the *Breard* case, most of the commercial cases since that time (1951) have involved interpretative rather than constitutional questions. Note, 77 A.L.R. 2d 1216 (1961). Possibly this Court's decisions in the *Martin* and *Schneider* cases have discouraged the enactment of ordinances outside the commercial field. An ordinance of Elizabeth, N. J., held invalid on its face under the First Amendment in *City of Elizabeth* v. *Sullivan*, 100 N.J. Super. 51, 241 A.2d 41 (1968), required a permit for all house-to-house calling except "for a bona fide political candidate running for public office." But *cf. Commonwealth* v. *Phillips*, 73 Pa. D. & C. 346 (1950); *People* v. *Walkenhorst*, 55 Misc. 2d 935, 287 N.Y.S.2d 760 (1968).

[14] The Federal Bureau of Investigation crime survey for 1973 covered 1526 suburban cities with population under 10,000. *Crime in the United States 1973* p. 106.

In 1973, the annual crime rate for "Burglary—breaking or entering" was 935.5 per 100,000 persons in suburban cities with population less than 10,000,[15] or 93.55 per 10,000—a rate considerably higher than that shown for Oradell in the Brugnoli affidavit. In 1972 and 1973 the annual rate for breaking and entering in other municipalities in Bergen County, comparable in population to Oradell, shows some with higher and others with lower rates, with Oradell close to the average. *Crime 1973 in New Jersey*, pp. 102-08. The figures are tabulated in Annex 1, *infra* p. 43.

What is even more to the point, there is no evidence in the record that a single one of the crimes tabulated in the Brugnoli affidavit was committed under "the pretext" of soliciting votes or charitable contributions, or had anything whatsoever to do with calling from house to house. All crime is regrettable, and the Borough Council of Oradell no less than the Congress of the United States should be allowed discretionary legislative elbow room to guard against it. But measures which involve infringement of constitutional rights must be justified by compelling need, and that the appellees have wholly failed to show.

2. *Standard to be Applied.* The New Jersey court, while acknowledging that the appellants' activities were "not diluted in any way by commercial overtones" (App. A5), nevertheless described it as "'conduct which amounts to more than the right of free discussion comprehends,' *Thomas* v. *Collins*, 323 U.S. 516, 540 . . . for the reason that it takes place not in public areas, traditionally the scene of uninhibited discussion, but rather is house-to-house in nature." Therefore, said the court majority, "the sole consideration" is that the ordinance be "reasonable." The

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[15] *Crime in the United States 1973, loc. cit.* note 14.

apparent purpose of this passage, especially read in conjunction with the cited passage from the contemporaneous *Collingswood* opinion (App. A34-A35), is to support the conclusion that the activities restricted by Ordinance No. 598-A deserve only a lesser degree of First Amendment protection than "pure" speech, and that the "compelling state interest" test, which Justice Pashman thought applicable (App. A15), need not be satisfied. We submit that Justice Pashman was right and the majority wrong.

It is doubtful that analysis of questions such as this case presents is much aided by distinctions sought to be drawn between "pure speech" and "impure speech" or "speech plus," despite occasional use of the expression "pure speech" in this Court's opinions. See, e.g., *Cox* v. *Louisiana,* 379 U.S. 536, 555. As the late Harry Kalven suggested, "all speech is necessarily 'speech plus.'" *1965 Supreme Court Review* 23. There can be no communication in a vacuum of circumstance; it is always somewhere, sometime.

Of course, as the New Jersey court wrote, "different societal concerns are implicated" by house-to-house as compared to public area speech. To mention only the obvious, speech in public areas must not unduly obstruct traffic or the general public's fair enjoyment of public facilities; speech at the front door must be at a suitably subdued decibel level, and subject to immediate termination if the householder withdraws the permission extended by the front path and the doorbell or knocker. It goes without saying that the permissible range of government restriction will vary according to the physical circumstances in which communication is conducted, but it by no means follows that restrictions on speech by door-to-door callers should be tested constitutionally by a less rigorous standard than speech at street corners or in parks.

The relevant factors are multiplied when the speaker endeavors to persuade the listener to enter into a contractual relation, or make a financial contribution. So, too, they are more complex when a negative commercial influence is exerted, as in the picketing of stores, or where the effort is to persuade or impress the public at large not by speech so much as by organized human mass, as in picketing, parades, rallies, and other demonstrations.[16]

But none of the foregoing considerations is applicable here, since all that is involved is canvassing for a political campaign or cause. If the phrase "pure speech" is to be used at all, surely this is the place for it. The kind of speech here in question, comprising as it does discussion of public issues and political electioneering, commands as high a place as any in the scale of First Amendment values, and can only be infringed upon a showing of compelling state interest. *Williams* v. *Rhodes,* 393 U.S. 23, 31, 42; *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 438.

3. *Lack of reasonable relation between the restriction and the prevention of crime.* Bare assertions of governmental interest do not justify intrusions on paramount constitutional rights. As this Court stated in *Bates* v. *Little Rock, supra* at 525:

> . . . governmental action does not automatically become reasonably related to the achievement of a legitimate

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[16] It was actions accompanying speech such as these which were involved in the cases and dicta cited by the New Jersey court. In *Thomas* v. *Collins,* 323 U.S. at 540, the dictum related to "the collection of funds or securing subscriptions," as it did also in the dictum in *Poulos* v. *New Hampshire,* 345 U.S. 395, 405, referring to the *Breard* case. In *Cox* v. *Louisiana,* 379 U.S. 536, 555, Justice Goldberg was speaking of "conduct such as patrolling, marching, and picketing on streets and highways."

> and substantial governmental purpose by mere assertion in the preamble of an ordinance. When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification.

Such a "reasonable relationship" is lacking here. As the legislative purpose is to prevent crime, especially breaking and entering, there should be some showing that canvassing house-to-house is a significant source of these offenses, but (as indicated above, pp. 25-27) there is no evidence of any such connection.

Even if there were such evidence concerning canvassing in general, that would provide no rational basis for singling out *political* canvassing. If prevention of crime were truly the purpose of the legislation, one would have expected a restriction covering *all* house-to-house callers, since any kind of canvassing would furnish the "pretext" referred to in the third preambular clause. There can be no rational explanation on an anti-crime basis for covering only political and charitable canvassing (and commercial solicitation, under the other provisions of Ordinance No. 73, App. E1), and allowing all other kinds to continue unrestricted.[17] This irrational singling out of political house-to-house callers cannot but suggest that the framers of the ordinance had other purposes than crime prevention in view, as indicated in a later portion (pp. 39-40) of this brief.

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[17] The poll-taking and rating service canvassing involved in the *Collingswood* case (App. A24), for example, is not covered by the Oradell ordinance. Nor are meter-readers or other inspectors or surveyors whose duties require calling house to house.

Indulging the impossible assumption that political and charitable canvassing can legitimately be selected, the registrational requirement itself is vulnerable. The reasoning apparently is that by requiring candidates for public office and their supporters, and supporters of other public causes, to register with its Police Department, the Borough of Oradell will somehow be better able to prevent crime by determining who is on its streets and at its front doors and for what purposes. But it is difficult to see how a written identification, perhaps sent to the police by mail (App. A5), can serve any useful police purpose.

Mere identification by name will not tell the police when or where the registering person will be calling house to house. There would be nothing to prevent those on criminal mischief bent from sending in their names as prospective canvassers or callers for a worthy cause, in which case the house-holder's telephonic check with the police would be more likely to lull than alert him. As Justice Hall, dissenting in the present case, concluded (App. A7-8), the requirement has no reasonable relation to the object sought to be attained, and consequently "exceeds the public need and substantially affects desirable conduct not sufficiently related to the claimed evil."

4. *Legal insufficiency of the registrational requirement.* The lack of any factual showing of necessity for the registrational requirements of Ordinance No. 598-A, together with the absence of a reasonable relation between the supposed disease and the proposed cure, would condemn the ordinance constitutionally even under the relaxed test of "reasonableness" wrongly applied by the New Jersey court. Under the properly applicable "compelling state interest" standard the margin of failure is, of course, even wider.

The New Jersey court in the *Collingswood* case relied (App. A37) on dicta from several cases in this Court referring favorably to the use of identification devices. All but one of those dicta, however, dealt either with commercial canvassing or solicitation of charitable contributions, and the passage from Justice Black's opinion in *Martin* v. *Struthers,* 319 U.S. at 148, merely states, without specification of means, that "identification devices" may be used to check the activities of "criminals posing as canvassers." [18]

Whatever Justice Black had in mind, his dictum must be read with awareness that it preceded this Court's decisions in *Thomas* v. *Collins, supra, Talley* v. *California, supra,* and other cases discussed earlier in this brief. In *Thomas* v. *Collins,* although the Texas statute considered there (323 U.S. at 519-20) called for more information than the Oradell ordinance, narrowly construed, appears to require, the Texas registration requirement was defended on the same ground as is now urged: that it was "merely a previous identification requirement" (323 U.S. at 538). But this Court, while recognizing that such requirements might be justifiable where solicitation of funds or subscriptions was concerned, held to the contrary where speech alone was involved, saying (323 U.S. at 540):

> If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous

[18] The cited statements in the *Schneider* (308 U.S. at 165), *NAACP* (357 U.S. at 464), and *Breard* (341 U.S. at 644-45) cases dealt with commercial canvassing, and the dictum in *Cantwell* v. *Connecticut,* 310 U.S. 296, 306 with solicitation of charitable contributions. The ordinance which prompted Justice Black's quoted comment covered the distribution of advertisements, and would not have been applicable to most political canvassing.

> registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

The Court's opinion in the *Talley* case contains (362 U.S. at 64-65) an exposition of the First Amendment values attaching to anonymity, which is equally relevant to the present case. In that case, all that was required was identification of the printer and distributor of handbills by a notice printed on the document,[19] while here identification is to

[19] It is said that 36 states have statutes prohibiting distribution of anonymous election literature. Gillmor and Baron, *Mass Communication Law* (1974) 161 n.2. There is a comparable requirement relating to federal elections in 18 U.S.C. 612. The constitutionality of such legislation has not yet been passed upon by this Court, and the state and lower court decisions are in conflict. Decisions upholding them include *United States* v. *Scott,* 195 F. Supp. 440 (D. N.Dak. 1961); *United States* v. *Insco,* 365 F. Supp. 1308 (M.D. Fla. 1973), aff'd on other grounds 496 F.2d 204 (C.A. 5th 1974). There are more to the opposite effect. *Printing Industries of the Gulf Coast* v. *Hill,* 382 F. Supp. 801 (S.D. Tex. 1974), vacated and remanded by this Court June 30, 1975; *Zwickler* v. *Koota,* 290 F. Supp. 244 (E.D.N.Y. 1968), rev'd on other grounds *sub nom. Golden* v. *Zwickler,* 394 U.S. 103; *People* v. *Mishkin,* 17 App. Div. 2d 243, 234 N.Y. Supp. 2d 342 (1962); *People* v. *Duryea,* 351 N.Y. Supp. 2d 978 (1974); *City of Bogalusa* v. *May,* 212 So.2d 408

be accomplished by the more drastic method of registration with the police. In political canvassing, the canvasser is unlikely to object to disclosing to the *house-holder* his identity or the source of whatever literature he is distributing, but may well feel quite otherwise about prior police registration. The Oradell ordinance, in this respect, is close kin to the federal statute unanimously condemned in *Lamont* v. *Postmaster General,* 381 U.S. 301, which required the addressee of foreign mail classified as "communist political propaganda" to notify the Post Office in writing that he wished to have it delivered.[20]

In view of the complete failure of evidence supporting any sufficient state interest in the registration required here, the words of Justice Harlan, concurring in the *Talley* case (362 U.S. at 66-67), are directly relevant:

> Here the State says that this ordinance is aimed at the prevention of "fraud, deceit, false advertising, negligent use of words, obscenity, and libel," in that it will aid in the detection of those responsible for spreading material of that character. But the ordinance is not so limited, and I think it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character. In the absence of a more substantial showing as to Los

(La. 1968); *Commonwealth* v. *Davis,* 17 Crim. L. Rep. 2261 (Mass. 1975).

These and other recent decisions involving disclosures of campaign contributions, where the governmental interest asserted is informing the electorate and preventing corruption of the political process, do not closely touch the issues of the present case, where no such values are invoked.

[20] See also *Bursey* v. *United States,* 466 F.2d 1059 (C.A. 9th 1972); *Wulp* v. *Corcoran,* 454 F.2d 826 (C.A. 1st 1972).

> Angeles' actual experience with the distribution of obnoxious handbills, such a generality is for me too remote to furnish a constitutionally acceptable justification to the deterrent effect on free speech which this all-embracing ordinance is likely to have.

For all the foregoing reasons, appellants submit that the Oradell ordinance must be held unconstitutional, as applied to them, under the First and Fourteenth Amendments.

II.

The Ordinance Is Invalid on Its Face for Overbreadth, Under the First Amendment Guarantees.

The New Jersey court concluded that the Oradell and Collingswood ordinances were intended "to protect against a sense of unease and dangers reasonably to be apprehended on account of strangers filtering through the community." But of course, as already remarked, the ordinance is not so limited, as it applies to "any person" without qualification or limitation. This comprehends not only "strangers" and other non-residents, but residents of the Borough as well, and it also covers not only candidates, but also canvassers and all other door-to-door callers for charitable or political causes. The ordinance covers *all* political campaigns and causes, "Federal, State, County or Municipal" as the case may be.

Apart from the infringement of appellants' rights, accordingly, the ordinance must be held invalid on its face for overbreadth. It deeply infringes the rights of *all* residents of Oradell, and *all* persons associated with political[21]

[21] Appellants are not, of course, directly concerned with the clause of the ordinance covering charitable contributions. Insofar

campaigns or causes in which canvassing door-to-door in Oradell might play a part.

It is clear that these appellants have "standing to raise an overbreadth challenge" to the Oradell ordinance based upon its infringement of the First Amendment rights of these many persons to whom the ordinance is applicable. *Grayned* v. *City of Rockford,* 408 U.S. 104, 114-15. The invalid scope of the statute is not confined to a few narrow types of action, as in *Broadrick* v. *Oklahoma,* 413 U.S. 601, 609-10. Here it is the broad sweep of the ordinance, and its chilling effect on a wide range of "expressive or communicative conduct" (413 U.S. at 613), which reveals its facial invalidity.[22]

The impact of the registration requirement on the entire political process is pervasive. Failing any showing of crime conditions peculiar to Oradell, the ordinance's effect must be scrutinized on the assumption that other municipalities may adopt like legislation. The inhibiting effect, on a state- or nation-wide basis, of municipal requirements that *all* political house-to-house canvassers register with the police needs no further emphasis.

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as the purpose of the ordinance is public safety, it would appear to suffer from the same defects whether applied to political or charitable canvassing. If a purpose to prevent fraud can be discovered, question would arise whether the identification requirement is reasonably related to that aim.

[22] There can be no question here, as there might be under a licensing statute, whether appellants should have registered or attempted to do so before challenging the statute. What is complained of here is not the danger of denial, for the police have no authority to deny, since they have none to issue, a license. What is complained of is the infringement of rights inherent in the registration process itself. To ground such a challenge, appellants can not be required to do the very thing to which they are objecting.

For the residents of Oradell, the impact is different but just as deep. Any Oradell resident who, becoming interested in some political "cause," wishes to call at all the houses in the block (or apartments in the building) to inform or persuade the neighbors, must first comply with the ordinance. So heavy a burden on community discussion could hardly be justified short of martial law conditions.[23]

Appellants do not contend that house-to-house calling is immune from legislative restriction. As suggested in the *Schneider* (308 U.S. at 165), *Cantwell* (310 U.S. at 306-07), and *Martin* (319 U.S. at 148, 151) cases, reasonable time limitations might be specified, and sanctions provided against disregard of house-holder notices forbidding entry to canvassers.[24] Other restrictions, perhaps temporary, might be justified to meet unusual local conditions.

"It has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." *Broadrick* v. *Oklahoma, supra* at 611-12. The Oradell ordinance wholly fails to meet this criterion, and should be held void on its face as overly broad.[25]

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[23] Some ordinances contain exemptions for community residents. See, e.g., *People* v. *Walkenhorst* and *Commonwealth* v. *Phillips,* both *supra* note 13. Such provisions may, however, raise equal protection questions.

[24] The New Jersey court's conclusion (App. A7), that "no lesser form of intrusion on the right of free speech" than Ordinance No. 598-A is conceivable, is quite unwarranted.

[25] See Note, *Overbreadth Review and the Burger Court,* 49 N.Y.U. L. Rev. 532 (1974); Note, *The First Amendment Overbreadth Doctrine,* 83 Harv. L. Rev. 844 (1970).

III.

The Ordinance Is Invalid on Its Face for Vagueness, Under the First Amendment Guarantees and the Due Process Clause.

The New Jersey court rightly noted (App. A4-A5) that Ordinance No. 598-A requires no fee, provides for no card or license, and reposes no official power to grant or withhold permission to canvass. The court declared itself impressed with the clarity of the ordinance with respect to the conduct—"door to door activities of charitable solicitors, political campaigners and advocates in behalf of political causes"—covered by the law.

On this basis, the New Jersey court described "the only requirements of the Ordinance" as "one of simple identification" (App. A5). But the phrase is far from self-explanatory and the court did not probe its meaning. We suggest the language of the ordinance—"notify the Police Department, in writing, for identification only"—is fatally vague and remits an excessive range of discretion to the police. The constitutional infirmity arises both from the sensitivity of the First Amendment freedoms to imprecise restrictions, and from the requirements of the due process clause with respect to fair warning of the metes and bounds of the criminal law. *Grayned* v. *City of Rockford, supra* at 108-09; *Coates* v. *Cincinnati,* 402 U.S. 611.

Since the ordinance itself is silent with respect to the requisites of "notify" and "identification" (other than that the notification be "in writing"), it must be presumed that the Police Department is given discretion to determine what sort of "notification" is sufficient for "identification."

There are no standards to guide or govern this discretion except the direction that a single notification shall be sufficient "for the duration of the campaign or cause." That is plainly insufficient to satisfy constitutional standards in a First Amendment context. *Lovell* v. *City of Griffin,* 303 U.S. 444; *Saia* v. *New York,* 334 U.S. 558; *Kunz* v. *New York,* 340 U.S. 290. The ordinance gives the Police Chief an impermissible range of discretion "with the attendant dangers of arbitrary and discriminatory application," and by its imprecision "operates to inhibit the exercise" of First Amendment freedoms. *Grayned* v. *City of Rockford, supra* at 109; see also *Coates* v. *Cincinnati, supra.*

It is true that in this case, unlike, for example, the *Lovell, Kunz,* and *Cantwell* cases, the police have no permit-issuing authority. But the practical consequence is not much different if criminal sanctions are attached to a vague notification requirement. Although there is no explicit delegation to the police of power to determine the requisites of notification, that authority is implicit in the generality of the language and the lack of legislative standards.

So far as the record shows, the Oradell police have promulgated no regulations specifying the content of the notification, and have issued no notification form. The police are left free to decide what will and what will not be treated as satisfactory. There is no way that anyone can certainly determine what will be sufficient.[26]

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[26] In this unsettled condition, simply asking the police gives no real assurance. The vice of the situation is double: a continuing impermissible range of discretion because of the vagueness of the ordinance, and uncertainty concerning the requirements of the particular moment. The New Jersey court has done nothing to clarify the ordinance, other than to "suggest," without definitely ruling, that (App. A5) "resort may be had to the mails."

Even if there are few or even no arrests or prosecutions for violation of the ordinance, its effects may be widely felt in terms of police admonitions, warnings, and instructions to "leave town" because no proper notification is on file. The dangerous breadth of the discretion conferred is patent. What is "identification"? Is it more than name and address?[27] Must the registrant disclose which candidate he is supporting, or what cause he is promoting? "Campaigns" come to an end, but "causes" more often do not; how is it to be determined whether or not the canvasser is now propagating a different "cause," so that a new notification is required? And, if only one notification can be required for each campaign or cause, how can the police get information concerning the time and place of canvassing which extends over weeks, months, or even years?

All this and more is left open. Such a degree of uncertainty is incompatible with First Amendment standards repeatedly articulated by this Court. It is likewise fatal, under the due process clause, to the criminal penalty provisions (imprisonment for up to 90 days and fine up to five hundred dollars) of the ordinance (App. E4). *Lanzetta* v. *New Jersey,* 306 U.S. 451; *United States* v. *Cohen Grocery Co.,* 255 U.S. 81.

[27] Chief Brugnoli's affidavit (App. G4-G5) states that neither photograph nor fingerprints are required, but of course this declaration is not binding for the future on him or his successors. Brugnoli's further statement that the notifier need only "let us know who he is" adds less than nothing by way of clarification.

IV.

The Ordinance Is Invalid on Its Face Under the Privileges and Immunities Clause of the Fourteenth Amendment.

It is, of course, settled that the privileges and immunities clause of the Fourteenth Amendment protects only those rights "which owe their existence to the Federal Government, its National character, its Constitution, or its laws." *Slaughter-House Cases,* 16 Wall. 36, 79. By now those rights may probably be regarded as limited to "interests, growing out of the relationship between the citizen and the national government, created by the Constitution and federal laws." *Colgate* v. *Harvey,* 296 U.S. 404, 444 (Stone, J., dissenting); *Madden* v. *Kentucky,* 309 U.S. 83.

The rights asserted by these appellants are of that description. The ordinance applies to "federal" as well as state and local campaigns and causes. Certainly the right to meet and discuss national candidates and issues stems from the Constitution and laws of the United States, and it may well also be that these rights in state and local contexts are so fundamental to a republican form of government that they should be accorded the same dignity.

Over a century ago this Court specified as among the guaranteed privileges and immunities the right to share in federal offices and participate in administering federal functions. *Slaughter-House Cases, supra* at 79-81, quoting the opinion in *Crandall* v. *Nevada,* 6 Wall. 35, 45 (1868).[28]

[28] It has been said that the right of suffrage is not a federal privilege or immunity. *Minor* v. *Happersett,* 21 Wall. 162, 177;

It is true, of course, that the Oradell ordinance is not an absolute barrier to the exercise of voting and associated rights, but no more was the travel tax outlawed in the *Crandall* case. The scope of the rights to vote and stand for office necessarily comprehends the activities discouraged and the discussions chilled by the ordinance challenged on this appeal.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of New Jersey should be reversed.

Respectfully submitted,

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Pope v. *Williams*, 193 U.S. 621, 632-33; *Hall* v. *Beals*, 292 F. Supp. 610, 613 n. 5 (D. Col. 1968). But in *Hague* v. *C.I.O.*, 307 U.S. 496, Chief Justice Hughes and Justices Roberts and Black expressed the view that the guaranteed privileges and immunities included the right to assemble and discuss the National Labor Relations Act. 307 U.S. at 512, 532. The Chief Justice, however, agreed with Justices Stone and Reed that the question had not been properly raised. Justices McReynolds and Butler did not reach the question, and Justices Frankfurter and Douglas took no part in the decision.

ANNEX 1

Annual Rate of Breaking and Entering in Bergen County, N.J. Municipalities with Population Between 8,000 and 10,000*

Municipality	Population in 1970**	Breaking and Entering 1972	Breaking and Entering 1973
Bogota Boro	8960	44	77
Closter Boro	8604	34	46
Cresskill Boro	8298	28	55
East Rutherford Boro	8536	114	91
Emerson Boro	8428	35	41
Leonia Boro	8847	68	110
Little Ferry Boro	9064	148	125
Midland Park Boro	8159	51	64
ORADELL BORO	8903	55***	68
Park Ridge Boro	8709	62	44
River Vale Twsp.	8883	44	49
Wood-Ridge Boro	8311	53	63

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* Source: Uniform Crime Reports State of New Jersey 1973, pp. 102-08.

** 1970 Census, as given in Uniform Crime Reports, *supra* at pp. 10-12. Estimated 1973 population figures are also given there, but 1970 is used because the New Jersey Court (App. A6) cited the 1970 figure for Oradell.

*** The figure in the Brugnoli affidavit (App. G4) is 65.